

Basis Form
January 21, 2003

The attached Basis Form has been modified to reflect the most recent guidance on SWANCC (Appendix A, which originated as a joint document between EPA, Corps, and DOJ). The Basis Form is a simple paraphrasing of our regulations at 33 CFR 328.3(a), which defines which waters are considered waters of the U.S. for regulatory purposes. There are seven broad categories of waters of the U.S. defined in 33 CFR 328.3(a), numbered appropriately as 33 CFR 328.3(a)(1-7). To aid you in referring to the appropriate citation in the event you have to refer to it, we have added the citation to the end of each definition on the Basis Form. Again, note that the Basis Form is a paraphrasing and you will not find the definitions in the form written identically to those in the regulations. As you will see from the Appendix A Guidance, any time we assert that a water as defined in 33 CFR 328.3(a)(3) is jurisdictional, we are required to seek concurrence from our HQ prior to issuing our final position. When we assert jurisdiction under any of the other definitions (33 CFR 328.3(a)(1-2, 4-7)), we are not required to seek higher-level concurrence from our HQ. After the final rulemaking, we will adjust the Basis Form to reflect the rule.

U.S. Army Corps of Engineers - Jacksonville District
Regulatory Division Basis for Jurisdiction
Version: 21 January 2003

Action ID Number:

Applicant:

Date:

☐ A. Property referenced in the file does not include or contain any of the waters of the United States described below.

☐ B. Property referenced in the file contains waters of the United States based on:

☐ The presence of wetlands as determined by application of the U.S. Army Corps of Engineers Wetland Delineation Manual.¹

☐ The wetlands are connected to navigable or interstate waters. The connection can be through a tributary system which can include man-made structures/conveyances such as culverts, ditches, control structures or channelized streams. (33 CFR 328.3(a)(7))

☐ The wetlands are adjacent to waters of the U.S.² (other than waters that are themselves wetlands). (33 CFR 328.3(a)(7))

☐ The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, i.e., navigable waters of the United States. Includes all land and waters below the ordinary high water mark of the navigable stream or channel.³ (33 CFR 328.3(a)(1))

☐ The presence of waters which are subject to the ebb and flow of the tide, including tidal wetlands, i.e., navigable waters of the United States.^{1,3} (33 CFR 328.3(a)(1))

☐ The presence of one or more tributaries (stream channels, man-made conveyances such as ditches or channelized streams, lakes, ponds, rivers, etc.) that eventually drain or flow into navigable or interstate waters. Includes property below the ordinary high water mark of the tributary.³ (33 CFR 328.3(a)(5))

☐ The presence of interstate waters including interstate wetlands.^{1,3} (33 CFR 328.3(a)(2))

☐ The presence of impoundment(s) of waters of the United States. (33 CFR 328.3(a)(4))

☐ The presence of territorial seas. (33 CFR 328.3(a)(6))

☐ The presence of other waters such as intrastate lakes (including abandoned borrow areas), rivers, streams (including intermittent streams), mudflats, sandflats, sloughs, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce. (33 CFR 328.3(a)(3))

¹ Wetlands are identified and delineated using the methods and criteria established in the Corps of Engineers Wetland Delineation Manual (87 Manual).

² The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

³ The lateral limits of waters of the U.S. are/or have been determined by the high tide line, ordinary high water mark, and/or by the limit of adjacent wetlands.

Regulatory Project Manager: